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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 926

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,

Appellants,

vs.

HOBOKEN MANUFACTURERS' RAILROAD COMPANY,

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

STATEMENT OPPOSING JURISDICTION.

PARKER MCCOLLESTER,
Counsel for Appellee.

JOHN DREWEN,
LORD, DAY & LORD,
Of Counsel.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 1100

HOBOKEN MANUFACTURERS' RAILROAD COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

and

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,

Intervening Defendants.

STATEMENT BY PLAINTIFF-APPELLEE UNDER PARAGRAPH 3 OF RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

Plaintiff-appellee having been served with a copy of the Jurisdictional Statement by defendants-appellants under Rule 12, herewith submits its statement opposing in part the said statement of defendants-appellants.

I.

As to the Supreme Court's Jurisdiction Under Applicable Statutes.

Plaintiff-appellee agrees with defendants-appellants in believing that the statutory provisions cited in subdivision A of their jurisdictional statement sustain the jurisdiction of the Supreme Court of the United States to review the judgment ~~and decree~~ herein, but only for the reason that the suit herein was a suit pursuant to U. S. C. Title 28, Section 41 (28) and Sections 43 to 48, inclusive, to set aside and annul an order of the Interstate Commerce Commission and that under the statutory provisions cited a direct appeal as a matter of right may be taken to the Supreme Court to review a final judgment or decree of a District Court in such a case.

II.

In Opposition to the Statement of the "Nature of the Case and of Rulings Below" in Subdivision D of Defendants-Appellants' Jurisdictional Statement.

While admitting the Supreme Court's jurisdiction by virtue of the applicable statutes, plaintiff-appellee is compelled to oppose much that is asserted in subdivision D of the Jurisdictional Statement of defendants-appellants for the reason that it conveys an erroneous impression of the nature of the proceedings before the Commission and of the decision of the Court below; and for the further reason that, even if correct, it would not add to or detract from the jurisdiction of the Supreme Court under the statutes.

Plaintiff-appellee respectfully refers to the record, including the report of the Interstate Commerce Commission and the Opinion, Findings of Fact and Conclusions of Law of the District Court for a correct and complete statement

of the case, of the matters in issue, and of the decisions herein. But for present purposes it objects to the following, among other features, of the defendants-appellants' Jurisdictional Statement.

A.

On page 3 of defendants-appellants' Jurisdictional Statement a sentence is quoted from the opinion of the District Court that "There is here no contention that the proceedings before the Commission were not fair and adequate in every way."

This sentence is quoted out of its context apparently to create the impression, which is thereafter argued more at length, that the Commission did everything that it should and that, therefore, the lower Court in setting aside the Commission's order dismissing the complaint was usurping functions within the province of the Commission and adequately exercised by it.

However, although it was conceded that there had been full and fair hearings before the Commission, so far as the presentation of evidence was concerned, except that it was alleged (Plaintiff's petition, paragraph XV) that the Commission erroneously and arbitrarily refused to receive certain evidence tendered by plaintiff, it was never agreed that the Commission fulfilled its duties and considered and made findings as to matters on which a determination was sought and required, and the opinion of the District Court makes it clear that by referring to the proceedings as "adequate in every way" it did not intend so to hold. Indeed it held directly to the contrary, for the whole burden of its decision is that the Commission failed to do what was required of it.

B.

Thereafter, throughout subdivision D of defendants-appellants' statement, there is an obvious attempt to create

the impression, which we submit would be wholly erroneous, that the District Court was asked to and did substitute its judgment for that of the Commission as to matters peculiarly within the function of the Commission, which the Commission determined after fair and adequate proceedings, and that the Supreme Court should therefore take jurisdiction to correct improper interference by the District Court with the administrative process.

On the contrary, the District Court, far from substituting its judgment for that of the Commission on an administrative matter primarily within the Commission's function, set aside the Commission's order dismissing plaintiff's petition and directed that the Commission reopen the proceeding *for the very reason that the Commission failed to exercise its judgment and to make a determination on matters peculiarly within its province.* The opinion of the District Court holds that this failure was the result of errors of law on the Commission's part.

C.

The plaintiff-appellee, hereinafter referred to as the Hoboken, is a short switching railroad serving various steamship piers on the Hoboken, N. J. waterfront of New York Harbor. On behalf of the intervening railroad defendants, commonly called the trunk line railroads, it completes the service covered by their freight rates in the case of freight interchanged with vessels docking at piers served by it. It is compensated for its services by divisions of the joint through rates published by the trunk lines and their connections.

These rates are of two kinds: (a) local rates, under which the railroads' service begins and ends with the placement of a car in a convenient position for loading or unloading and under which the Hoboken's service is limited to merely

switching the car; and (b) so-called lighterage-free or shipside rates, which include compensation to the railroads for and under which they undertake the receipt of freight brought in by ships at the foot of ship's tackle alongside ship, the handling of the freight to and its loading into cars, the furnishing of the necessary cars for the purpose and, in the case of freight moving in the reverse direction, the unloading of the cars and the handling of freight to shipside. The Hoboken's compensation or division out of the rates in the first category, where its obligation is limited to switching alone, is 60 cents a ton. When it loads and unloads freight and handles it between shipside and car its division is $1.35 per ton, the difference representing the cost of loading, unloading and handling for which the shippers pay the railroads by the lighterage-free rates.

Seatrain Lines, Inc. is a water carrier which has developed a type of ship designed to carry freight in railroad cars, together with a crane with so-called cradle for the transfer of railroad cars with freight loaded therein between a railroad track on a pier and its vessels. When Seatrain by means of its special facilities delivers freight to a railroad already loaded in a car the railroad is saved the burden of furnishing the car for the rail movement and the labor of handling the freight from shipside and loading it into the car. Similarly, when Seatrain accepts freight already loaded in a car, the railroad is relieved from the labor and expense of unloading the freight from the car and handling it to shipside.

The proceeding before the Commission involved the amount of the division to be paid by the trunk line railroads to the Hoboken, out of the lighterage-free or shipside rates on freight interchanged with the vessels of Seatrain. The Hoboken and Seatrain had entered into a contract by which Seatrain agreed to deliver and receive freight in cars on its cradle and the Hoboken had contracted to make a pay-

ment to Seatrain in consideration of the savings in labor and expense to the railroads and the benefits of the added traffic resulting from Seatrain's method of interchange and as compensation to Seatrain for producing these savings by the use of its special facilities and for the responsibilities assumed by it in connection therewith.

The trunk line railroads had insisted on paying the Hoboken on such freight a division of only 60 cents a ton, thus making it impossible for the Hoboken to pay any compensation to Seatrain, and keeping for themselves the entire savings in labor and expense produced by Seatrain's method of interchange. Therefore, the Commission was appealed to to determine the divisions which the Hoboken should receive out of the lighterage-free rates on Seatrain freight.

Because Seatrain had acquired all the stock of the Hoboken, it was recognized that the contract between them could not be accepted as conclusively determining the proper compensation to Seatrain (although an agreement providing for payment had previously been arrived at before Seatrtain acquired the stock and at a time when the Hoboken and Seatrain dealt with each other at arm's length). The Commission was therefore asked to consider and determine what would be just and reasonable compensation to be paid by the Hoboken to Seatrain and to be reimbursed to the Hoboken in its divisions out of the lighterage-free rates.

The Commission failed to make such a determination and instead, upon a finding that the point of physical interchange was the cradle and that operation of Seatrain's facilities in transferring cars between the pier and its vessels was a part of its water carrier service, it held that no payment to Seatrain could properly be considered a part of the cost of the Hoboken's rail service. It thereby ignored entirely the fact that the use by Seatrain of its facilities operated to relieve the Hoboken and its trunk line con-

nections of the labor and expense of loading, unloading and furnishing cars, for which their rates included compensation to them. Its failure to consider and make the determination requested and its decision that the division of 60 cents was adequate, this being the amount which the trunk lines had allowed the Hoboken and which covered only its switching costs, had the obvious effect of either preventing the Hoboken from paying any compensation to Seatrain or of doing so without reimbursement. It thus upheld the trunk lines in retaining all that portion of the lighterage-free rates representing compensation paid by shippers for the labor and expense of loading, unloading and handling from which the railroads were saved by Seatrain's methods and facilities and transferred to the trunk lines all of the savings and benefits of the Seatrain method of interchange with no consideration to either the Hoboken or Seatrain therefor.

Instead of determining what would be reasonable compensation to Seatrain under the circumstances and how the benefits of the new interchange method should be divided between the Hoboken and the trunk lines, the Commission justified its action upon the ground that the corporate relationship deprived the contract of any probative force that the Hoboken should pay compensation to Seatrain, and that there was reason to believe—a conclusion with no support in the evidence—that Seatrain could be expected to give the benefits of its patents, facilities and undertakings to the Hoboken without compensation (although on the Commission's decision they would really be given to the trunk line railroads). The Commission also erroneously remarked that it did not appear that Seatrain had been able to exact an agreement for compensation from any other railroad with whom it had bargained at arm's length, disregarding the fact that it had done this very thing in the case of the Hoboken itself when it was independent.

The District Court, far from attempting to substitute its judgment for that of the Commission, decided that the Commission by failing to consider what would be reasonable compensation failed to fulfill its own duties under the statute and merely directed the Commission to consider and make a determination on facts which under Section 15 of the Interstate Commerce Act it was obligated to consider.

III.

Pending Petition to Commission for Reopening.

As just stated, one of the reasons given by the Commission for its summary disposal of the matter was that it did not appear that any contract had been made with Seatrain for payment of compensation by a railroad with whom Seatrain had dealt at arm's length. This was in error on the record then before the Commission. Furthermore, apart from the order of the District Court directing the Commission to reopen the proceeding, the plaintiff-appellee has filed a petition with the Interstate Commerce Commission asking the Commission to reopen the proceeding before it to receive evidence that since the record before the Commission was closed Seatrain has entered into at least two contracts with groups of railroads with whom it has dealt at arm's length, by which these railroads have agreed to make payments to Seatrain similar to those provided for in the contract between the plaintiff-appellee and Seatrain. The Commission has so far not acted upon this petition.

This situation is presented because it is believed that the Supreme Court is considering whether it should receive briefs and hear oral argument at this stage should be fully informed as to the status of the matter before the Com-

mission, on a point which the Commission itself regarded as material.

Respectfully submitted,

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